enunciated, what is in issue now, on this score, is not the expense to the defendants or the extent to which such expense may be out of all proportion to the advantage accruing to the plaintiffs. What has to be done now is to provide a proper drainage system which will cater for the needs of the situation in the manner required by law and the relevant regulations relating to drainage, and the expense arising out of and incidental to this must be borne by the defendants.

I have no information before me from which I can accurately predict how soon the relevant authorities will be able to make up their minds on what is an appropriate drainage and earthwork system for Lot 4128 and for the water course which flows through it.

Since the time frame is so uncertain and the defendants' financial circumstances may wittingly or unwittingly undergo some changes, in the meanwhile, I consider it just and equitable to order the defendants to deposit in this Court, or if they prefer, to furnish a Bank Guarantee in terms acceptable to the plaintiffs for the sum of $450,000 which will be held in reserve until such time as the decision of this Court is rendered on the final estimates for the costs of the remedial measures and the appropriate legal principles applicable to the situation.

Even a cursory study of the following decisions should make it evident that there are serious legal questions in deciding the magnitude of the damages to which the plaintiffs may finally be held to be entitled. The cases I have in mind are *Dodd Properties Ltd.* v. *Canterbury City Council,*[2] *Perry* v. *Sidney Phillips & Son*[3] and *Paula Lee Ltd.* v. *Robert Zehil & Co. Ltd.*[4] Counsel may also care to consider *Tito* v. *Waddell,*[5] a case which took 4 years to try and whose reported decision by Megarry V.C. runs into 241 pages. If nothing else, the result of these researches should make us all sadder and wiser in the realisation that the search for the proper measure of damages is a pursuit which creates almost as many problems as it solves.

In all the circumstances I give judgment to the plaintiffs forthwith for the sum of $94,500 which is three-quarters of $126,000 as damages for loss of use of the property from 1977 to 1985.

The plaintiffs will also have an immediate order that all their costs up to date be taxed and paid by the defendants.

As to further damages for loss of use and in respect of damages and the costs of providing a proper drainage system the parties are given liberty to apply generally as to the further conduct of this case until the dispute is finally resolved.

Claim allowed.

Solicitors: *Arthur Lee & Co.; Hassan Yunos & Co.*

PERNAS SIME DARBY HOLDINGS SDN. BHD. v. M. POOVANANDRAN

[A.C.J. (Zakaria Yatim J.) July 24, 1985]
[Kuala Lumpur – Civil Suit No. C289 of 1984]

Practice and Procedure – Pleadings – Striking out defence – Defence of bare denial – Defect in pleading – Affidavit evidence not admissible to rectify – R.H.C. 1980, O.18, r.19.

This was an appeal against the decision of the Senior Assistant Registrar, who ordered that the defendant's defence be struck off under Order 18 rule 19.

The plaintiffs' claim against the defendant was for liquidated sum of monies due and owing from the defendant (who was the employee of the plaintiffs) in the sum of $42,626.27. In this defence, the defendant denied the claim and put the plaintiffs to strict proof of the same. Subsequently, the defendant filed an affidavit which purported to improve the statement of defence.

Held: (1) there was no indication as to what was the nature of the defence. It was nothing but a sham defence and the Senior Assistant Registrar was right in ordering that the defence be struck off;

(2) the court was unable to consider the affidavit evidence in this case.

Cases referred to:

(1) *Remmington* v. *Scoles* [1897] 2 Ch. 1, 6.
(2) *UMBC* v. *Palm & Vegetable Oils* [1983] 1 M.L.J. 206.

CIVIL SUIT.

S. Ravichandran for the defendant/appellant.
P.H. Yeo for the respondents/plaintiffs.

Cur. Adv. Vult.

Zakaria Yatim J.: This is an appeal against the decision of the Senior Assistant Registrar,

who ordered that the defendant's defence be struck off under Order 18 Rule 19.

The facts of the case are as follows: The plaintiffs are a company incorporated in Malaysia having an office at No. 54, Jalan Ampang, Kuala Lumpur. The defendant is an ex-employee of the plaintiffs. Paragraph 3 of the statement of claim states that the plaintiffs' claim against the defendant is for liquidated sum of monies due and owing from the defendant to the plaintiffs in the sum of $42,626.27. In paragraph 4, the plaintiffs aver that, by a letter dated October 13, 1983 addressed to the plaintiffs, the defendant undertook to settle the monies due to the plaintiffs. Paragraph 5 states that when the plaintiffs wrote to the defendant to pay them the said sum, the defendant refused and/or neglected to pay them. In the statement of defence, the defendant states that "The Defendant denies paragraph 3, 4 and 5 of the statement of claim and puts the plaintiffs to strict proof of the same."

It is clear that the defence is a blank denial of the plaintiffs' claim. There is no indication as to what is the nature of the defence. In my view it is nothing but a sham defence and the Senior Assistant Registrar was right in ordering that the defence be struck off. In *Remmington* v. *Scoles*,[1] Rigby L.J. in his judgment at pages 7 & 8, said,

"I do not wish in any way to infringe upon the salutory rule that a defendant has a right to put in issue any allegation in a statement of claim that he pleases ... But if the Court can on the facts that are not in dispute ascertain that the actual defence put in is really a defence which has no relation to the merits of the case, in other words, that it is a sham defence, then the Court ought to exercise the jurisdiction which it undoubtedly has, and order that the sham defence be struck out ..."

The defendant filed an affidavit (enclosure (9)) which purports to improve the statement of defence. I am unable to consider the affidavit evidence in the instant case. In *UMBC* v. *Palm & Vegetable Oils*,[2] Raja Azlan Shah Ag. L.P., as he then was, in delivering the judgment of the Federal Court, said, at page 207, "... we cannot but observe that any defect or omission in the statement of claim cannot be made good by affidavit evidence."

For the reasons stated above, I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Anthony Fernandez & Partners; Shook Lin & Bok.*

PUBLIC PROSECUTOR v. LIEW AH KIM & ORS.

[A.Cr. J. (Wan Yahya J.) July 15, 1985]
[Malacca – Criminal Appeal No. 46 of 1984]

Criminal Law and Procedure – Unlawful assembly – Licence – Identification – Essential ingredient for the offence – Police Act, 1967, s. 27.

Arising from the announcement of the Malacca State Government of its intention to develop Bukit China, the issue grew into a subject of public controversy. The Democratic Action Party had announced its intention to hold a "walk and jog" meeting at Bukit China on August 1984. On that day at 6.15 a.m. 20 or 30 persons had gathered at a temple located at the foot of the hill. Barely two hours later the number swelled to around 800 to 900 persons. The Chief Police Officer, Malacca, who was supervising his men around the area thought that no offence had been committed. Meanwhile on another part of the scene about 600 yards away from the temple, the police road block manned by police personnel stopped a busload of people wearing T-shirts with the words, "Save Bukit China" imprinted on them. The Chief Police Officer, who arrived at the spot a few minutes later, found the passengers were in the process of alighting from the bus. At this stage the officer issued a warning through his loud hailer to the effect that those who were gathered in front of him were committing unlawful assembly under section 27 of the Police Act and he ordered them to disperse immediately or face police action. The warning was ignored. On the Chief Police Officer's instruction the 18 respondents were arrested and taken to the police station. They were subsequently released on bail and charged in Court. At the hearing the Magistrate acquitted and discharged all the respondents without their defence being called. The prosecution appealed.

Held: (1) once there is a gathering of three or more persons in a public place then it is an assembly and when that assembly is an organised one as distinguished from a spontaneous one, then a licence under section 27(2) of the Police Act is required from the police. Failure to comply with the requirement will render the organiser and any participant, with the knowledge that such assembly was unlicenced, liable to prosecution under section 27(5)(a) of the Act;

(2) when a police officer arrests in this case the 18 accused, confines and takes them to the police station, gets the entire group photographed with him, takes down the particulars and then releases them on bail and the same persons as in the photograph appear to answer to the charge read against them, no further identification is required;

(3) the essential ingredients for the offence under the present charge are (i) there is an assembly or gathering or the coming together of three persons or more in public places; (ii) such assembly or gathering is a convened or organised event as distinguished from a spontaneous gathering of persons for a lawful object; (iii) no licence has been issued under section 27(2) by the O.C.P.D. for such assembly; (iv) each of the persons charged knew that he is taking part in an assembly, meeting *etc.* that is being convented or organized without a licence;

(4) the order of acquittal and discharge in this case